

Property Law Bill

11 October 2006

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

Property Law Bill

Our Ref: ATT395/16

1. We have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990 ("the Bill of Rights"). We advise that the Bill appears to be consistent with the Bill of Rights.
2. The Bill replaces the Property Law Act 1952 and restates, reforms and codifies (in part) various aspects of the law of real and personal property.

Age discrimination issue

3. Clause 22 prohibits persons under 18 years of age from executing a deed, appointing an attorney or acting as an attorney. Clause 22 is accordingly *prima facie* inconsistent with the right to be free from discrimination on the basis of age as affirmed by s 19 of the Bill of Rights and s 21(1)(i) of the Human Rights Act 1993. However, we consider this inconsistency is justified in terms of s 5 of the Bill of Rights.
4. Clause 22's objective is to ensure the actions of executing a deed, appointing an attorney or acting as an attorney, are done by persons who are of sufficient maturity to properly understand the nature and consequences of those actions and who may undertake these actions without undue pressure or influence. The clause presumes that persons of 18 years and over are sufficiently mature to do these actions, whereas persons under 18 are not.
5. As we have pointed out in previous advice age restrictions necessarily involve a degree of generalisation without regard to the particular abilities or maturity of individuals within the distinguished age group. Age restrictions are set in law at different points for different purposes.
6. In our view limiting the age as to when young people are presumed to be sufficiently mature to execute a deed, appoint an attorney or act as an attorney to those 18 years and over, is a justifiable limitation on the rights of persons under 18 to be free from discrimination. This limit protects those under 18 who may not have sufficient maturity and capacity to understand the significance of these actions, in particular the obligations and liabilities one is subject to when acting as an attorney.
7. Further, this limit is consistent with those age limits set as to when young persons may do the following actions in relation to property: enter into enforceable contracts under the

Minors Contract Act 1969; pledge property under the Second Hand Dealers and Pawnbrokers Act 2004; be appointed as a director under the Companies Act 1993 and do all testamentary actions under the recently introduced Wills Bill (PCO 7080/11).

Yours faithfully

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